Commissioner Burnett
Sent to Regular Mailing List

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street Newark, N. J.

BULLETIN NUMBER 120 May 22, 1936

1. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - STRICT ENFORCEMENT REQUIRED NOTWITHSTANDING PRICE WAR - FORBIDDEN SIGNS

May 18, 1936.

N O T I C E

The rules governing signs are made to be obeyed, price war or not.

These rules provide that no retail licensee shall "directly or indirectly" advertise or permit the advertising of the price of any alcoholic beverage on the exterior of the licensed premises or in a show window or door or in the interior when visible from the street. The only exception is that placards not exceeding 1½ x 1½ inches may be displayed within the show window advertising the price of liquor sold for off-premises consumption.

Signs such as "Price Slashed"; "Price War On"; "Tremendous Reductions in Price" or words of similar meaning or which give the public the same impression, are indirect advertising of price even though the price itself is not named, and therefore, are in violation of the rules.

Licensees should not be stampeded, whatever the price panic, into violation of rules which stand good at all times. Price fixing is none of my business, but the Control Act is and these rules will be strictly enforced all the time.

Immediate checkup will be made of all licensees throughout the State. Violations will be visited with immediate revocation proceedings.

Chiefs of Police and Municipal officials will please report to me all violations which come to their attention.

D. FREDERICK BURNETT
Commissioner

2. LICENSES - LIMITATION OF NUMBER - MUNICIPAL REGULATIONS LIMITING THE NUMBER OF LICENSES ARE NOT SUBJECT TO THE COMMISSIONER'S APPROVAL FIRST OBTAINED BUT MAY BE SET ASIDE ON APPEAL IF THE FACTS WARRANT.

SAINT PAUL'S METHODIST EPISCOPAL CHURCH
Bridgeport, New Jersey

May 12, 1936.

Dear Sir:

Our Township Committee of Logan Township, Gloucester County, New Jersey, has passed a resolution that there shall be

only one place for the sale of alcoholic beverages for every 1,000 citizens in our Township. There being only 1800 citizens there can only be one establishment of this kind and we already have that.

However, a Joseph Federici of Paulsboro, N. J. has applied for a license and last night was not granted because of the above mentioned resolution. Now, Mr. Federici says he is going to apply to you for this license. What I would like you to tell me is whether this would be possible for you to grant such a license in view of the above mentioned resolution?

We circulated a petition requesting our Township Committee to pass the said resolution limiting the number of places of this nature. This petition is also worded to ask you not to grant such a license, if it were possible for you to do so.

Therefore, will you kindly inform me if you could grant such a license if you cared to, and if you would under the above circumstances, if you could? Frankly, Mr. Burnett, we have a fine little town and the sentiment is against such a move. I feel that in view of a case of this kind, you would be fair to our community, if you have the power, in view of this resolution.

I shall deeply appreciate hearing from you, on this matter.

Sincerely,

L. G. ATKINSON

May 18, 1936.

Rev. Lawrence G. Atkinson
Bridgeport, New Jersey

Dear Mr. Atkinson:

I have before me yours of May 18th.

I also had in the same mail from Mr. Dunk, the Township Clerk, a copy of the ordinance limiting the number of licenses in Logan Township adopted by the Township Committee on May 11th. The ordinance, being a limitation of the number of licenses which may be issued, is not, according to Section 37 of the Control Act, subject to the Commissioner's approval first obtained. I have written to Mr. Dunk to that effect. It is valid and in full force and effect as it now stands. The statute confers upon the governing body of each municipality the power to limit the number of licenses within its municipality either by resolution or by ordinance. How many licenses shall be issued is a question which the local municipal authorities in the first instance must decide. This is as it should be as they, being in a position to know fully the local situation, can best tell just exactly how many licenses the community needs.

The ordinance is, however, subject to review by me on appeal. Section 38 of the Act says that if any person affected by any limitation of the number of licenses shall consider himself

aggrieved thereby, he may appeal to the Commissioner in respect thereto and thereupon the Commissioner, after public hearing, may set aside, vacate and repeal the limitation complained of or change, alter, amend or otherwise modify the same.

Hence, it would be my duty, if on appeal the circumstances supported such a conclusion, to set aside the ordinance and to reverse the denial of the license by the municipality. The license then would be ordered issued. Whether I would or not depends entirely upon the facts. As regards the particular case you mention, it would be improper for me to express any opinion one way or the other until an appeal has been duly made and both sides have been given full and equal opportunity to be heard.

Licenses have been denied by municipal license issuing authorities on the ground that the number had been limited by resolution or by ordinance and the quota had been reached. Where the applicant on appeal has failed to sustain the burden of proof necessary to demonstrate that the community needs an additional license or that an additional license would better and more conveniently serve the public, I have concluded that the local limitation was reasonable as adopted. See, for example, Franklin StoresCo.v.Belleville, Bulletin 102, item 2, a copy of which is enclosed.

No appeal has yet been filed by Mr. Federici. If he does so, I shall see that you are notified and in which event I cordially suggest that you and the people who are associated with you in the matter appear at the hearing so as fully to present your side of the case.

Sincerely yours,
D. FREDERICK BURNETT
Commissioner

3. MUNICIPAL ORDINANCES - COMMUNION BREAKFASTS - EXCEPTIONS TO CLOSED HOURS MUST APPLY TO ALL ORGANIZATIONS WHICH FALL WITHIN THE REASON OF THE RULE WITHOUT PARTIALITY AND ALSO TO ALL MEMBERS OF THE LICENSE CLASS TO WHOM PERMISSION TO REMAIN OPEN WOULD BE GIVEN.

May 12, 1936.

My dear Commissioner:

Here is a new one for the book. At least I think it is a new one, and if you tell me you have already answered it on page ---, I will have to plead guilty to negligence in not studying the new corpus juris sufficiently. The question concerns communion breakfasts.

You will perhaps remember that the Teaneck ordinance provides a special classification for restaurants, under which there is one license at present outstanding. The ordinance also makes mandatory the closing of all licensed premises, without distinction, up until twelve o'clock noon on Sundays. It so happens that our one restaurant licensee seems to be the only person in this immediate vicinity who has proper accommodations for such large gatherings as communion breakfasts, and during the last two Sundays such events have been held there, with the possibility of others in the future from surrounding churches.

Now, of course, communion breakfasts are events about which nobody could complain, yet as the ordinance stands at present, opening up the licensed premises is distinctly a

violation of the ordinance. I believe that the Council would be perfectly willing to amend the ordinance to permit the celebration of communion breakfasts, but the question then arises as to whether such an amendment would have the approval of your department, or whether you would consider such an exception as violating the principle that exceptions should be very closely guarded, if allowed at all. I suggest that if such exceptions be made, they would only be made upon the written request of the Priest in charge of the particular parish desiring to hold such a breakfast.

Yours very truly,

PAUL A. VOLCKER
Township Manager

May 18, 1936.

Paul A. Volcker
Township Manager
Teaneck, New Jersey

Dear Mr. Volcker:

I have yours of May 12th. It is, indeed, new.

I believe that Communion Breakfasts are fine and worthy functions. Yet they are affairs essentially of the social nature held under the auspices of the group or organization which has, just before the Breakfast, attended Mass and received Communion. As social affairs, conducted on licensed premises, alcoholic beverages might be served. Even if not, in any event, the premises would not be "closed", pursuant to the local ordinance, until 12 noon on Sunday.

That is where the trouble lies. It means that if you make exceptions to your local closing regulations in favor of Communion Breakfasts, you will have to go farther and include not only Communion Breakfasts but also all other affairs and all other organizations which desire the use of licensed premises during closed hours.

If you wish to prepare a regulation in line with the above and send it in, I will give it prompt and careful consideration. It should not be arbitrary or discriminatory and should give all those similarly situated equal privileges. It should apply impartially not only to all organizations but also to all members of the license class to whom permission to remain open for this purpose would be given. See in this connection re Harrington, Bulletin 118, item 13 and the items cited therein.

Consider, however, that allowing any exception to opening licensed premises during closed hours, probably means the eventual frittering away of the closing rule itself. Are there no other premises, save those licensed for the sale of alcoholic beverages, where such affairs could be conducted?

Very truly yours,
D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - SADOVSKY v. MILLSTONE

GEORGE SADOVSKY,

Appellant,

-vs- ON APPEAL

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MILLSTONE, CONCLUSIONS

Respondent.

John H. Kafes, Esq., Attorney for Appellant.
Benjamin Romano, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license at Ely's Corner, Township of Millstone.

Respondent relies upon its resolution limiting the number of licenses in Millstone Township, adopted May 20, 1935, reading:

> "WHEREAS the Township Committee of the Township of Millstone has considered the matter of the issuing of Plenary Retail Consumption Licenses for the sale of alcoholic beverages in the Township of Millstone and has concluded and adopted the policy that not more than four Plenary Retail Consumption licenses shall be issued or be permitted to exist in the Township, and there being sufficient licenses granted in the Township to serve the community as well as the traveling public, has concluded and adopted the policy that no Plenary Retail Distribution licenses shall be granted, and
>
> "WHEREAS on June 4, 1934 a resolution was adopted limiting the number of Plenary Retail Consumption licenses in the Township of Millstone to five, one in the vicinity of Perrineville, one in the vicinity of Manalapan, one in the vicinity of Clarksburg, one in the vicinity of Carr's Corner, and one in the vicinity of Smithburg, and
>
> "WHEREAS the experience of the Township Committee since that time and the observation during this period of the needs, requirements and social desirability of other licensed premises has resulted in the conclusion now reached and the policy now being adopted that the four existing Retail Consumption Licenses are ample and sufficient to supply the needs of the community as well as the traveling public,
>
> "NOW THEREFORE BE IT RESOLVED, that the

resolution passed on June 4, 1934 fixing the number of Plenary Retail Consumption licenses and adopting rules and regulations concerning the sale of alcoholic beverages in the Township of Millstone, be and the same is hereby amended as follows:-

"RESOLVED that there shall not be in effect at any one time in the Township of Millstone more than four Plenary Retail Consumption licenses as defined in the Alcoholic Beverage Control Act of the State of New Jersey as amended, the intention herein being to limit the number of licenses to sell alcoholic beverages at retail in accordance with the authority given to the Township Committee by virtue of the aforesaid Act,

****

"BE IT FURTHER RESOLVED that the policy now adopted by the Township of Millstone is that the four existing Plenary Retail Consumption licenses are ample and sufficient to supply all of the needs for alcoholic beverages in the Township of Millstone and to supply the traveling public in said Township, and that any additional or further licenses would be socially undesirable and entirely unnecessary,

****

"BE IT FURTHER RESOLVED that the four Plenary Retail Consumption licenses hereinabove provided as the limit, shall be so issued that one of said licenses shall be in the vicinity of Perrineville, one in the vicinity of Cal's Corner, one in the vicinity of Smithburg, and one in the vicinity of Clarksburg."

There are now but three consumption licenses issued in the Township of Millstone. The only vacancy is at "Cal's Corner" (sometimes called "Carr's Corner").

The premises for which appellant seeks a license are on the County Road running from Hightstown to Perrineville, at Ely's Corner. But Ely's Corner is not Cal's Corner. Appellant candidly concedes that his premises are not in that vicinity.

Hence the question boils down to this: Should the well-planned locations spread out through the Township and specified in the resolution be honored, or must the numerical quota be filled, because it exists, even though the premises sought to be licensed are not in the vacant location.

In Giberti vs. Township of Franklin, Bulletin #38, item 2, the Township of Franklin, composed of three small villages known as Broadway, Asbury and New Village, had limited

the number of licenses to one in each village. One license had already been issued in New Village. The Giberti application was for another in the same village. The action of respondent Board in denying the second license was affirmed.

In Vicari vs. Bloomfield, Bulletin #57, item 4, I held that the Town of Bloomfield, which by resolution had limited the number of a certain class of licensees to twenty-five and had issued twenty-three and had adopted a policy not to issue more than one license of this class in any one vicinity and to spread the same throughout the Town, was wholly within its rights.

In Young vs. Pennsauken, Bulletin #114, item 2, eleven vacancies existed under the license limiting resolution of that Township, but the Township Committee found and I so determined on appeal that there were, in fact, sufficient licenses in the immediate vicinity of the place for which the license was sought. Hence, despite the existence of eleven numerical vacancies, it was held proper to deny a license in the particular location.

So, in the present case, the mere existence of a numerical vacancy is not dispositive. The only vacancy in the wisely planned locations is at Cal's Corner, not Ely's. Limitation of licenses stated in mere numbers must give way to community sentiment expressed in terms of specified locations.

The foregoing makes it unnecessary to consider the remonstrance of the local residents against issuance of the license in the particular place.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 19, 1936.

5. APPELLATE DECISIONS - GOLDMAN vs. TRENTON

FRANK J. GOLDMAN,
Appellant,
-vs-
CITY COUNCIL OF THE CITY OF TRENTON,
Respondent.

ON APPEAL

CONCLUSIONS

J. Richard Kafes, Esq., by J. H. Kafes, Esq., Attorney for Appellant.
Adolph F. Kunca, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail distribution license.

Respondent contends that the application was properly denied because it was not filed until some time in November 1935 and, therefore, was barred by virtue of respondent's license limiting Resolution No. 95, adopted July 9, 1935 which provides:

> "applications for Plenary Retail Consumption, Plenary Retail Distribution and Club Licenses for the period ending June 30, 1936, be received by such Council from all applicants therefor up to and including the 31st day of July, 1935, and not thereafter, and the City Clerk be and he is hereby authorized to receive such applications on behalf of this Council."

Appellant, admitting that his application was not filed until after July 31, 1935, argues:-

(1) That the case should be remanded for determination on the merits as was done in Sciarrotta vs. Trenton, Bulletin #102, item 1. That case, however, was radically different. There the appellant attempted to file her application for liquor license during July, 1935 and requested the Municipal Clerk to hold it until she received her citizenship papers, but he refused to accept it on the ground that she was not yet a citizen. Both he and she thought that, therefore, she was not eligible for a license. When, later, she received her naturalization papers on September 21, 1935, she immediately filed her application which was denied, not on the merits, but solely because not filed before July 31, 1935. She appealed. It then turned out that, because of a trade treaty between the Italian Government and our own, she had been eligible for a license, so far as her citizenship was concerned, all the time even though she didn't know it. Nor did any one else know it except the Secretary of State at Washington and those who just happened to find it out. And all this because Federal treaties "made under the authority of the United States" are, together with the Constitution and laws made in pursuance thereof, "the supreme Law of the Land". She had tried to file her application before July 31, 1935 in strict accordance with respondent's Resolution #95. The Municipal Clerk would not even receive it because at that time he had not heard of the treaty. Neither had the governing body of Trenton. Neither had I. It, therefore, would have been unfair to have rejected it merely because filed too late, when the only reason why it was not on file was a mutual mistake, common both to the license issuing authority as well as the applicant. Hence it was remanded to the Trenton City Council for consideration on its merits.

In the instant case, the present appellant made no attempt to file any application until November 1935, which was long after the limitation of the maximum number of licensees had become fixed on July 31. No excuse or extenuation is even attempted. No special or exceptional situation is shown. The Sciarrotta decision, therefore, is not in point.

(2) That the denial was improper because respondent had issued a license to one Milton Mirkin, although his application was filed after July 31. The exceptional circumstances attending the issuance of the Mirkin license have been fully discussed heretofore, and are set forth in the Sciarrotta decision, supra. Suffice it to say that his application was no afterthought as the Trenton Council had been duly informed of his intention to

apply by letter dated June 17, 1935. In the exercise of fair and sound discretion, his license was issued. The case is not apposite.

(3) That the City Council of Trenton passed a motion on November 12, 1935 instructing the City Clerk "to accept" appellant's application, and thereby waived the provisions of Resolution #95, or at least extended it so far as this appellant is concerned, and therefore, the City Council is bound to consider the application on its merits. As thus stated, the argument seems indisputable but the fact is that this motion was passed only because of the special request of appellant and for the sole purpose of enabling appellant (as he conceived) to appeal from the refusal of the City Council to grant the license. I say "as he conceived" because appellant represented to the City Council that they must accept the filing of the application before they could act upon it, or otherwise there was nothing either to grant or refuse, or from which to appeal. The motion, made for his accommodation, was merely that the application "be accepted". The learned attorney for the appellant himself drew distinction between "accepting" and "acting" on the application. The operative words of the motion, viz., "be accepted" refer, therefore, only to the physical receipt of the application and not to mental assent. Thereafter the City Council denied the application on the ground that it was barred by the aforesaid Resolution #95. There was, therefore, no estoppel, no waiver, no extension. A request made to the City Council for an avowed single purpose is not to do double duty. Whether a license should be issued is not a game of legal wits. The City Council at no time intended to waive the restrictive effect of Resolution #95. Their policy of limiting licensees has been consistently carried out since the adoption of that resolution. I shall not permit mere technicalities to prejudice that policy.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 19, 1936.

6. APPELLATE DECISIONS - VAN SCHOICK vs. HOWELL.

CHARLES W. VAN SCHOICK,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF HOWELL TOWNSHIP, MONMOUTH COUNTY,) CONCLUSIONS
Respondent.)
- - - - - - - - - - - - - - - - - -)

Harry Sagotsky, Esq., Attorney for Appellant.
Brief submitted by McDermott and Finegold, Esqs., on behalf of Respondent

BY THE COMMISSIONER:

This is an appeal from denial of a transfer of appellant's retail consumption license from "Quaker Rest" on High-

way No. 33, to "Wayside Inn", on the same Highway, Howell Township.

Respondent contends that its action in denying the application was proper because, at the same time said application was denied on April 4th, 1936, it adopted the following resolution:

> "BE IT RESOLVED that no retail Consumption License or Retail Distribution License for the sale of intoxicating liquors shall be issued or transferred to any person from and after date hereof and until July 1, 1936.
>
> "BE IT FURTHER RESOLVED that the application of Charles W. VanSchoick for a transfer of Plenary Retail Consumption License from the premises known as Quaker Rest and located in Howell Township, Monmouth County, New Jersey, to the premises known as Wayside Inn, Howell Township, Monmouth County, New Jersey, be and the same is hereby denied; and that no transfer of Plenary Retail Consumption License from one location to another and no new license for the sale of liquor shall hereafter be issued until July 1, 1936."

Respondent contends further that its action was proper because at a special meeting held April 14th, 1936 it adopted the following resolution:

> "RESOLVED that no Retail License shall be issued or transferred to a natural person unless he shall have been a resident of the Township of Howell for at least six calendar months continuously, immediately preceding the application for such license or transfer."

In August 1934, respondent granted to appellant a plenary retail consumption license for "Quaker Rest". In July 1935 it renewed this license. While appellant was conducting business at "Quaker Rest", a fire occurred on February 20, 1936 which practically destroyed the building on the licensed premises. The evidence shows that the owner of the ruined building completed demolition thereof, began the erection of a new building and made application to respondent for a consumption license to be issued to her for these premises. When appellant learned that she had made this application, he rented "Wayside Inn" and applied for transfer of his license to this place, which application was denied. The application by the owner of "Quaker Rest" for a new license was also denied.

It seems from their actions that appellant and the owner of the building considered the fire to be of such a serious nature as to terminate the relation of tenant and landlord which had existed between them. It has been decided, however, that even if a licensee's interest in the licensed premises ceases, he may thereafter apply for transfer of the license to a different place of business under the provisions of Section 23 of the Control Act. In re Hackettstown, Bulletin #98, item 11.

The transfer to other premises is a privilege not inherent in appellant's license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will

be affirmed. Knights of St. Stephens vs. Trenton, Bulletin #37, item 16; Botfan vs. Howell, Bulletin #64, item 9; Fafalak vs. Bayonne, Bulletin #95, item 5. In the present case, however no personal objections, except as to residential qualifications hereafter considered, have been raised against appellant. The premises to which he seeks to transfer his license are located on the same highway, about a half-mile away from the premises in which he formerly conducted business. The nearest licensed place will be about one mile away from his new location, thus differentiating this case from the Botfan case cited above, in which the present respondent was sustained in its refusal to transfer. The transfer will not increase the number of licensees. Since there is no question made of the character of appellant or the suitability of the premises to which he desires transfer, it follows that unless the resolutions quoted above are sufficient to sustain the refusal to transfer, such refusal is arbitrary and unreasonable. Cf. Colacuori vs. Orange, Bulletin #87, item 8.

Examination of the resolution of April 4, 1936 shows that it is intended to forbid during the balance of the fiscal year (1) the issuance of new retail consumption and retail distribution licenses; (2) transfers from person to person; (3) transfers from place to place. There is no occasion to consider the first or second objective in this case. As to its third purpose, it should be viewed in connection with Section 23 of the Control Act, which provides that the local issuing authority, on compliance with certain conditions, may transfer any license issued by it to a different place of business. In the exercise of its discretionary powers, respondent could refuse the transfer because of objections as to the person or as to the place to which the transfer is sought. The resolution, however, goes beyond this. It attempts arbitrarily to prohibit all such transfers, irrespective of whether there is reason or not. It is, therefore, disapproved to the extent indicated, viz., an absolute prohibition of transfers from place to place.

The resolution of April 14, 1936, however, requires more careful consideration. It is admitted that appellant does not live in the Township of Howell, having been a resident of Freehold for the past fifteen (15) years. It has already been determined that, as to new licensees, a requirement of residence for a period of time prior to the date of application is reasonable. Iamello vs. Rumson, Bulletin #77, item 9. In that case I said:

> "We come, then, to the remaining question, whether the requirement that an applicant for a retail license be a resident of the municipality in which the premises sought to be licensed are located, for a period of one year prior to the filing of the application, is reasonable. The dispensation of alcoholic beverages from time immemorial has been recognized as impregnated with public interest. The character of the persons to whom the privilege of making such sales is entrusted is of utmost importance - perhaps in the long run the most effective safeguard against abuses. An issuing authority is under the positive duty to insure the issuance of licenses only to persons of good character. It must, therefore, investigate carefully all applicants. Any requirement reasonably designed to facilitate such investigation is eminently proper. The requirement that a person be a resident of the municipality from which he seeks a license, for a period of time, so that he may become known and a basis laid to judge his character has a

> direct and immediate connection with the proper administration of licenses. In Re Piscataway, Bulletin #75, item #9, the Commissioner said: 'I can see a good reason why a person may be required to reside in a Township for three years as a condition precedent to obtaining a liquor license. Because of his residence, opportunities would be afforded to form some estimate of his character.'"

See also Tuccillo vs. Princeton, Bulletin #97, item 11; McHugh vs. West Deptford, Bulletin #106, item 1. So, in Premier-Pabst Sales Co. vs. Grosscup, just decided by the U. S. Supreme Court on May 18, 1936, the constitutional validity of the 1935 Pennsylvania Statute, requiring that no one may sell beer in Pennsylvania unless duly licensed and that no license may issue to a corporation unless all of its officers and directors and 51% of its stockholders had been residents of the State for a period of at least two years prior to the application for a license, was conceded. Because of that concession and the fact that all of the officers and directors of the applicant corporation were non-residents of Pennsylvania and that all of its stock was held by another foreign corporation, it was held that the corporation had no standing to challenge other provisions of the Act.

Residence, then, has its moments.

The requirement of residence, however, is not a fetich to be invoked blindly but only when it has a reasonable tie-up with the problems of liquor control. For the reasons aforesaid, the requirement is of real value in selecting new applicants. But appellant is not a new applicant. He is a present licensee. He has been a licensee in the Township since August 1934. In considering a similar ordinance in re Piscataway Township, Bulletin #75, item 9, I said:

> "There is no objection to a local residence requirement insofar as it applies to applicants who are not, at the time of its adoption, licensed by you. But I have grave doubts as to its propriety so far as it may disqualify those who are duly licensed at the time of its adoption and who have made commitments and expended monies in reliance upon a license previously granted and the renewal of which they would be deprived without fault on their part. *****If all it means is Piscataway for Piscatawayans,I must disclaim concern with insular economics and disapprove it as having no reasonable connection with any problem of Liquor Control."

Respondent in this case has had an opportunity to know appellant and to judge his character since August 1934. In July 1935 it renewed his license. Therefore, so far as he is concerned, the basic reason for a residential requirement fails. The resolution of April 14, 1936 is unreasonable as applied to appellant.

The action of respondent is, therefore, reversed. Respondent is directed to issue the transfer as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: May 20, 1936.

7. APPELLATE DECISIONS - KARAS v. PATERSON

BELLA KARAS,

Appellant,

-vs-

THE BOARD OF ALDERMEN OF THE CITY OF PATERSON,

Respondent.

ON APPEAL

CONCLUSIONS

J. David Newman, Esq., Attorney for Appellant.
Charles F. Lynch, Esq., by Frederick C. Vonhof, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from revocation of plenary retail consumption license, which had been issued to appellant for premises at 30 Bridge Street, Paterson.

During an inspection, pursuant to a complaint, two investigators from this Department discovered (1) a gallon jug full of alcohol and a quart bottle of coloring in a room on the second floor of the building in which the licensed premises are situated; (2) in a box concealed beneath a trap door in the ladies' toilet on the licensed premises, they found:

1 gallon of alcohol
2 bottles rye flavoring
6 pints whiskey
2 funnels
12 empty bottles.

It was admitted that all of the liquor found in both places was illicit.

Appellant and her husband denied knowledge of the jug of alcohol and bottle of coloring found on the second floor, and denied they had any control of the room in which these articles were discovered. They did have access; they did have a key for it in their own cash register. According to their story, the owner of the building had rented this upper apartment to two men - hazy, wraithlike figures, flitting in and out of the testimony but never materializing either during the investigation or at the hearing before the Paterson Aldermen or at the hearing of this appeal. This upper apartment consisted of two rooms. A door to the outer room was open. The door to the inner room, where the alcohol and coloring were found, was closed and had no knob. A key which fitted the door to the inner room was found in the cash register on the licensed premises. Appellant's husband insisted that this key, which he called "a plain skeleton key", also fitted doors on

the first floor. It is unnecessary, however, to determine just what connection this skeleton key had, if any, with the spooks who were alleged to have rented the rooms where the illicit liquor was found, for, if this were all, there might be some doubt as to appellant's guilt.

The situation, however, is different with reference to the articles found in a cache on the licensed premises, well calculated to elude the eye of mere man. These were contained in a wooden box below the level of the floor of the ladies' toilet. One of the investigators lifted a small piece of carpet in the toilet, found a trap door in the floor, requiring no key, opened it and behold - the box! The carpet was not tacked down. It was only a bit larger than the trap door itself. A mere moving, even a kick of the carpet disclosed the trap door so crudely built that the State investigator discovered it immediately on simple inspection. Merely stepping on the carpet aroused his suspicion. The lady, however, says that she purchased these premises from a prior licensee about July 1934; that she did not know of the existence of the trap door, or the box and its contents. Yet she admits she went in and out of this room every day. With appreciation of the keenness of feminine observation and, also curiosity, I cannot believe that she used this room daily for a period of more than eighteen (18) months in complete ignorance of the existence of this hiding place. Assuming she never lifted the carpet, never swept it or cleaned it, and carefully avoided even stepping on it all this time, the fact remains that illicit liquor was found on licensed premises.

There is sufficient evidence to sustain respondent's finding that appellant was guilty of possessing illicit alcohol.

Finding, as I do that the adjudication of guilt was properly made, it follows that the penalty of revocation was warranted under the circumstances of this case. In re West Orange, Bulletin #113, item 6.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 20, 1936.

8. RULES CONCERNING CONDUCT OF LICENSEES - COUPONS AND DISCOUNTS - HIDDEN BONUS CARDS BEING ESSENTIALLY LOTTERIES ARE PROHIBITED.

May 21, 1936.

Amy E. Shinn,
Borough Clerk,
Red Bank, N. J.

Dear Madam:

I have your letter of May 18th.

The Rules Concerning Conduct of Licensees and the Use of Licensed Premises heretofore promulgated by this Department

prohibit lotteries on licensed premises. A distribution of prizes by chance is a lottery . See Bulletin #56, Item #11. Ordinary coupons entitling the customer to specified merchandise or a specified discount do not involve any element of chance and consequently are not governed by the rules proscribing lotteries. Cf. Bulletin 87, Item 15. We are at present considering the desirability of eliminating the use of coupons and discount cards on the ground that they are designed to increase unduly the consumption of alcoholic beverages and it may be that pertinent regulations will be issued in the near future.

The "hidden bonus" cards being distributed by Sanders & Co. are distinguishable from ordinary coupons since the customer does not know what his bonus will be until after he has paid the full purchase price. The distribution of the bonuses is clearly by chance and the temptation afforded is that of disproportionate gain. Consequently, such "hidden bonus" cards constitute a lottery within the prohibition of the rules. As the Commissioner said in Bulletin #56, Item #11, "the mere fact that everybody gets something for their money doesn't cure the illegality".

It is the ruling of the Commissioner that "hidden bonus" cards may not be distributed by licensees or possessed on licensed premises .

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

9. TRANSPORTATION - CONSUMERS BUYING LIQUOR CANNOT TRANSPORT MORE THAN TWELVE QUARTS OF HARD LIQUOR DURING ANY ONE DAY - OFFENDERS LIABLE TO ARREST AND CONFISCATION OF VEHICLE.

LICENSEES - HAVE NO RIGHT TO PURCHASE FROM EACH OTHER.

May 20, 1936.

N O T I C E

The Alcoholic Beverage Law was made to be obeyed, price war or not.

It is illegal for anyone except a licensed dealer or transporter and then only in a licensed vehicle bearing proper transportation insignia thereon, to transport anywheres within the State more than twelve (12) quarts of "hard liquor" during any one day. Hence, consumers buying liquor cannot transport more than twelve quarts at a time.

Complaints reach me that consumers are buying two and three cases at a time and carting them off in private cars. Orders have been issued to arrest all such drivers and to confiscate the vehicles.

Reports also come in that taverns and package stores are purchasing liquor in large quantities from fellow retailers who are taking the lead in the price war. Retail licensees well know they have no right to purchase from each other. They may buy only from licensed wholesalers or manu-

facturers. Therefore, any purchase made from a fellow retailer by another, whatever the quantity and whether the vehicle is licensed or not, is a violation, and revocation proceedings will be immediately instituted. Checks will be made in respect to all purchases made by retailers to determine if the liquor has been acquired according to law.

D. FREDERICK BURNETT,
Commissioner.

10. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - FORBIDDEN SIGNS.

May 21, 1936.

Sinders, Inc.,
Jersey City, N. J.

Gentlemen:

Inspectors report your violation of Rules Governing Signs by your display on front window of paper signs, one 15 x 24 inches, the other 24 x 36 inches; the first reading: "All Liquor Reduced Prices on request inside"; the second reading: "All Liquor Reduced Lots of Good Specials Every Purchase a Bargain Stock Up Now!!! Prices on request inside."

Enclosed is copy of my notice concerning signs, of May 18th ~~(Bulletin 118, Item 1)~~. Your signs are a violation of the rules and of the interpretation made by said notice, and equally as objectionable as the illustrations used therein.

No advertisement of price, direct or indirect, may be made except pursuant to those rules, and then only by placard not exceeding 1½ x 1½ inches. While I have no control over prices, I am charged with the duty of forbidding practices designed unduly to increase the consumption of liquor.

My staff reports that you promptly removed the offending signs upon demand. I shall therefore not institute revocation proceedings this time, but no further warning will be given. This must not occur again.

I am also informed that your window is permanently painted "Cut Rate Liquors." I direct that this sign be removed forthwith.

Very truly yours,

D. Frederick Burnett,
Commissioner.

Similar letters were sent to: TERMINAL WINE & LIQUOR, INC., Jersey City, for signs reading: "Why Pay High Prices? Get the Low-down on Liquor Prices here"; "These Items are Amazingly Low-Priced"; "These Popular Brands Greatly Reduced"; "Deep Cut Prices on all Wines and Liquor"; and to L. BAMBERGER & CO., INC., Newark, for price tags 3½ x 5 inches and poster 10 x 15 inches reading: "34,000 Worth* from Our Regular Stock at Savings of 14% to 30%————Seventh Floor. *At Start of this Event."